January 29, 1999

D.T.E. 98-69

Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in the following tariffs: M.D.T.E. Nos. 990 through 994, filed with the Department on July 7, 1998 to become effective August 1, 1998 by Massachusetts Electric Company.

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I. INTRODUCTION

A. Overview

Pursuant to the electric utility restructuring act ("Act"), St. 1997, c. 164, § 196; G.L. c. 164, § 34A, Massachusetts Electric Company ("MECo" or "Company") has submitted an alternative streetlighting tariff, designated as Rate S-5, to the Department of Telecommunications and Energy ("Department") for review. The proposed Rate S-5 is available to municipal customers that choose to purchase their streetlighting equipment from the Company. The proposed Rate S-5 includes a distribution charge in addition to other charges for transmission, transition, demand-side management, renewable energy, and the provision of standard offer and default services. Under the proposed Rate S-5, the municipal customer would own and maintain the purchased streetlighting equipment, and the distribution charge would collect the Company's costs associated with delivering power to the customer's streetlighting equipment.

The Department has docketed this matter as D.T.E. 98-69.[(1)] On July 20, 1998, the Department suspended the effective date until no later than February 1, 1999 in order to investigate the propriety of the proposed tariff.

B. Procedural History

On July 7, 1998, the Company submitted its alternative streetlighting tariff, Rate S-5, to the Department for review. Pursuant to notice duly issued, the Department conducted a public hearing in Worcester on September 17, 1998. Pursuant to G.L. c. 12, § 11E, the Office of the Attorney General ("Attorney General") filed a notice of intervention. The

Department allowed the petitions to intervene of the City of Haverhill ("Haverhill"), the Massachusetts Municipal Association ("MMA"), and Western Massachusetts Electric Company. In addition, the Department allowed the petitions to participate as limited participants of Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company, Eastern Edison Company, Fitchburg Gas and Electric Light Company, and the Towns of Acton and Lexington ("Acton" and "Lexington", collectively "Towns").

The Department conducted a procedural conference on November 13, 1998, and on December 9, 1998, conducted an evidentiary hearing. The Company sponsored the testimony of Theresa M. Burns, senior rate analyst for the Company. The evidentiary record consists of 109 exhibits, including the prefiled testimony of Ms. Burns and responses to information and record requests. Initial and reply briefs were submitted by the Company, Attorney General, City of Haverhill, and MMA.[(2)]

II. THE COMPANY'S PROPOSAL

A. Introduction

The Company proposes to price the Rate S-5 distribution charge to collect the ongoing cost to deliver power to the customer's streetlighting equipment (Exh. MECo-1, at 6) The Company proposes to set the Rate S-5 revenue requirement to collect the costs that will be incurred by the Company, assuming that all of the Company's streetlighting equipment that is subject to sale is sold to its municipal customers (id. at 7). In Massachusetts Electric Company, D.P.U. 96-25 (1997), the Department approved a settlement agreement ("Settlement") that included a cost to serve the streetlighting classes of approximately $25.5 million ($25,543,799).

The Company proposes that not all streetlighting equipment should be subject to sale (id. at 9). MECo asserts that it should retain ownership of foundations, conduit, conductors, and other equipment (id. at 9). Based on the Company's determination of the streetlighting equipment that should be subject to sale, MECo proposes to allocate 73.5 percent of its gross streetlighting plant investment, resulting in approximately $18.1 million ($18,139,109) in base rates, to "lamp service" (id. at 9, 22).[(3)] MECo proposes to account for the remaining 26.5 percent of its gross streetlighting plant investment, resulting in approximately $7.4 million ($7.404,690) in base rates, as ongoing distribution service (id.). Based on a streetlighting revenue requirement of $25.5 million and the sale of 73.5 percent of the streetlighting plant, MECo proposes that the Rate S-5 distribution charge should be 6.247 cents per kilowatt-hour ("kWh") (id. at 18, 46). In addition, the Company proposes to charge customers on Rate S-5 the same transmission, transition, demand-side management, renewable energy, standard offer service, and default service charges as charged to the Company's other streetlighting rates S-1, S-2, S-3, and S-20 (id. at 6)

In addition, the Company proposes to modify its existing streetlighting rates, S-1, S-2, S-3, and S-20, to clarify certain provisions (id. at 14). Specifically, MECo proposes to expand the current liability and indemnification provisions, expand the availability clause for private streetlighting service, and to allow existing S-2 and S-3 customers who had not yet completed their conversions under these now-closed tariffs to complete their conversions (id. at 14-15, 61-85).

The Company has revised its initial proposal by eliminating optional pole charges from its Rate S-5 tariff, and by adding language to the Rate S-5 tariff that notifies customers of the Company's intention to include pole attachment charges in the Rate S-5 tariff at the time of its next general rate filing (Company Reply Brief at 2-3). MECo proposes to eliminate the dedicated pole charges because the Department stated that a municipal purchase of streetlighting equipment includes the dedicated pole (Company Reply Brief at 2, citing D.T.E. 98-89, at 2-3). The Company contends that if a municipality must purchase the dedicated pole then there is no need to have a dedicated pole charge (Company Reply Brief at 2). MECo proposes to add the pole attachment charge language because the Department stated that it would be appropriate to propose pole attachment fees at the time of the Company's next rate case (Company Reply Brief at 3, citing D.T.E. 98-89, at 3).

B. Costs Recovered by the Alternative Tariff

1. Introduction

Consistent with the Settlement approved by the Department in D.P.U. 96-25, the Company submitted an unbundled cost of service study which stated that the cost to provide the distribution and lamp service to the streetlighting rate classes is $25.5 million (Exh. MECo-1, exh. TMB-2, at 1; see also D.P.U./D.T.E. 96-25, Exh. MECo-1, Book 1, Att. 2, exh. PTZ-3, at 1). The Company stated that, although the unbundled cost of service for distribution service to the streetlighting classes is $25.5 million the existing streetlighting distribution rates were designed to collect approximately $18.7 million ($18,731,594) and that the approximate $6.8 million ($6,812,205) shortfall was allocated to the other rate classes (id.). The Company notes that in D.P.U./D.T.E. 96-25-C at 17, the Department directed MECo to further reduce its streetlighting rates to meet the rate reductions required by the Act. To meet the rate reductions required by the Act and to comply with D.P.U./D.T.E. 96-25-C, the Company reduced the streetlighting revenue requirement to its current level of approximately $14.3 million ($14,332,103). For the purposes of the alternative tariff, the Company proposes that the apropriate revenue requirement should collect the fully allocated cost to serve the streetlighting class, $25.5 million.

2. Position of the Parties

a. The Attorney General

The Attorney General states that neither the Company's restructuring agreement nor the rate reduction requirements of the Act in any way prohibit the Department from setting the price of any new streetlighting distribution rates to recover their fully allocated cost of service (Attorney General Brief at 2). The Attorney General contends that to collect less than the fully allocated cost of service would provide an incorrect price signal to communities contemplating service under the Rate S-5. In addition, the Attorney General states that Department precedent supports requiring Rate S-5 to be cost-based (id.). Therefore, the Attorney General argues that Rate S-5 should be priced to collect $25.5 million (id.).

Further, the Attorney General states that the Company should not benefit from additional net revenues which would result from cost-based rates for streetlighting distribution service customers (id.). The Attorney General contends that, because the streetlighting rates approved by the Department were priced to collect only $18.7 million, if Rate S-5 is priced to collect $25.5 million, the Company has the potential to overcollect the $6.8 million being allocated to the other rate classes. Therefore, the Attorney General argues that any additional net revenues collected by the Company through a fully allocated cost of service Rate S-5 should be credited back to the Company's customers other than those on the streetlighting rates (id.).

Lastly, the Attorney General states that if the Department approves a revenue requirement for Rate S-5 that is below its cost to serve, then the Rate S-5 tariff should include a disclosure to ensure that customers considering service on Rate S-5 are aware of the potential for an increase in the future (id.). The Attorney General asserts that such a disclosure would significantly reduce the likelihood that municipalities could be misled as a result of current pricing levels and should eliminate any future expectations regarding the maintenance of the subsidy to streetlighting customers that would be based on fairness or continuity arguments (id.).

b. Haverhill

Haverhill asserts that the current streetlighting rates subsidies were not at issue in this proceeding because the Department did not allow review of the underlying cost of service (Haverhill Reply Brief at 1). Therefore, according to Haverhill it would be unfair to base an alternative distribution rate increase on streetlighting subsidies that were not subject to review or challenge in this proceeding (id.). Haverhill claims that the Company's next general rate proceeding is the appropriate forum to adjudicate the cost to serve the streetlighting classes (id.).

Further, Haverhill claims that for a municipality to determine whether it could lower its costs under G.L. c. 164, § 34A by switching to Rate S-5, it would compare the maintenance costs and the capital costs embedded in their current rates with the maintenance costs and capital costs collected by Rate S-5. According to Haverhill, if the costs embedded in the current streetlighting rates are subsidized and Rate S-5 is not subsidized, it is difficult for a municipality to determine if switching to Rate S-5 will result in cost savings (id. at 2). Therefore, Haverhill argues that the Department's policy

on the costs to serve MECo's streetlighting rates should be uniformly applied to all streetlighting rates, including Rate S-5 (id.). Haverhill urges the Department to set the Rate S-5 revenue requirement at $14.3 million, which is the level currently collected by all of MECo's streetlighting rates (id. at 6).

c. MMA

MMA argues that there is no need to develop a new rate class because there is no evidence that municipalities that will be subject to Rate S-5 are new to MECo's system, or have different demand or consumption levels than before being placed on Rate S-5 (MMA Brief at 12). MMA claims that creation of a new rate class will (1) impose unnecessary cost burdens on streetlighting customers that will be eligible for Rate S-5, (2) result in MECo overcollecting, and (3) eliminate any rate relief the Legislature intended when it enacted G.L. c. 164 § 34A (id. at 13). Instead, MMA proposes that municipal customers should continue to be served under their existing streetlighting tariffs and should receive a credit on that streetlighting rate for the amount of streetlighting equipment they elect to purchase (id.).

MMA argues that, absent the development of a credit for purchased equipment on the current rates, the Department should set the Rate S-5 revenue requirement at $14.3 million because MECo will experience no increase in costs to serve S-5 customers, and because no rate-making principle supports the creation of a new customer class for those municipals that purchase their streetlights (id. at 16-17). Consequently, MMA states that customers should receive the same benefits on Rase S-5 that they receive under the current structure, and that the Rate S-5 cost structure should be based on the 1.07 precent rate of return that the Company collects under its existing streetlighting tariffs (id. at 17). Therefore, according to MMA, MECo should not be allowed to calculate the alternative tariff using the 9.25 percent rate of return that was allowed in D.P.U. 96-25 simply because MECo believes that all streetlighting classes are being subsidized by other customers (id.).

MMA points out that each of the streetlighting rates approved by the Department in Massachusetts Electric Company, D.P.U. 95-40 (1995) did not collect its full cost of service (MMA Reply Brief at 4). MMA claims the concerns regarding continuity, which led to subsidizing the streetlighting rates in D.P.U. 95-40, remain valid and there is no evidence in this record that proves otherwise (id.). MMA states that the appropriate time to address the issue of eliminating the cross subsidy is in the Company's next general rate case (id.). Therefore, MMA argues that it would be unfair to eliminate the subsidy from Rate S-5 in this proceeding (id.).

In response to MECo's argument that a subsidized rate will give municipalities the wrong price signal should they elect to switch to Rate S-5, MMA states that this argument only makes sense if it were certain that the subsidy will be eliminated in the Company's next general rate case (id. at 5). MMA notes that there is no information on the record indicating when the subsidy will end (id.).

In response to the Attorney General's suggestion that MECo be required to return any excess revenues resulting from implementation of Rate S-5, MMA states that this course of action is unworkable and bad public policy (id. at 9). MMA claims that it is unworkable because there is no practical way to determine whether there is any excess revenues (id.). MMA asserts it is bad public policy because it would have the Department implement a rate that, at the outset, assumes the Company will overcollect revenues (id.).

d. The Company

MECo argues that continuation of the subsidy should be rejected and a rate based on the cost to serve should be accepted because (1) the appropriate allocation of costs is necessary for communities to make valid assessments regarding streetlight purchases, (2) the unbundled service in Rate S-5 is a new voluntary service offering that should be priced correctly, and (3) Rate S-5 is a new alternative rate and therefore is not required to meet the rate discounts mandated by the Act (Company Brief at 4-5). Further, MECo points out that the Department found in D.P.U. 96-25-C, that "municipalities which, pursuant to Section 196 of the Act, choose to purchase streetlights and then convert to an alternative tariff may fall outside the rate reductions requirement of the Act" (id. at 5).

In response to MMA's argument that there is no need to develop a new rate class, the Company states that a new rate class is needed because the service provided, the costs associated with providing the service, and the terms under which it is provided, vary significantly from the service, costs, and terms provided to the bundled streetlight users (Company Reply Brief at 4). Further, MECo notes that the alternative tariff is authorized by G.L. c. 164, §34A(a)(i) (id. at 4).

In response to the Attorney General's suggestion that MECo be required to return any excess revenues resulting from implementation of Rate S-5, the Company states that it has no objection to developing a report that quantifies the avoided cross subsidy and accumulates in an account the amount to be returned to the customers that provided the subsidy in the first instance (Company Reply Brief at 6). The Company proposes to return the accruals at the time of its next general rate proceeding.

3. Analysis and Findings

The Act requires the Department to approve an alternative streetlighting tariff for municipalities that purchase all or part of their streetlighting equipment.[(4)] G.L. c. 164, §34A(a)(i). The Act does not prescribe how the alternative streetlighting tariff should be designed. Instead, the Act has left the design of the alternative streetlighting tariff to the Department's determination. Costs and terms of providing the alternative tariff

service vary significantly from those related to bundled streetlighting service. The differences are wide enough to warrant recognizing a new rate class.

The Act states that the rate reductions need only be applied to tariffed rates approved by the Department before January 1, 1997. G.L. c. 164, § 1B(b). Therefore, because it is a new tariff, the Department may, but is not required to, price the alternative streetlighting rate to meet the otherwise mandated rate discounts. In addition, in D.P.U./D.T.E. 96-25-C, the Department noted that municipalities that choose to purchase streetlights and then convert to an alternative tariff may fall outside the rate reductions requirement of the Act.

One of the Department's rate-design goals is to produce a rate for a particular class of customers that generates revenues covering the entire cost of serving that particular class of customers. D.P.U. 95-40, at 144. Of course, the rate resulting from achieving this goal must be compared with the existing rate. A resulting rate, priced at its fully allocated cost to serve, can so radically depart from the existing rate that it violates the goal of rate continuity for customers within the particular class. Then, the resulting rate must be adjusted so that progress toward the cost of service goal does not violate or abandon the rate continuity goal. It is a question of balance. Id. at 145.

The Department notes that the cost of service study filed with the Settlement stated that the cost to serve the streetlighting rate classes was $25.5 million. However, the Settlement allocated only $18.7 million to the streetlighting rate classes, and allocated the $6.8 million shortfall to the other rate classes. Had the Settlement proposed to serve the streetlighting rate classes at $25.5 million, it would have resulted in an increase in the streetlighting rates that would have raised a concern in meeting the Department's goal of rate continuity.

If the Department were to set the Rate S-5 revenue requirement at $25.5 million, the Company may overcollect by up to $6.8 million. On brief, the Company agreed to refund any overcollection. However, the identification of any excess revenues is not subject to precise determination. Moreover, it would not be appropriate to implement a rate that, at the outset, assumes the Company will overcollect revenues. The Department finds that setting the Rate S-5 revenue requirement at $18.7 million is reasonable because it will allow the Company to collect all the costs agreed to in the Settlement, and it will avoid any overcollection. Therefore, the Department directs the Company to design Rate S-5 using a streetlighting revenue requirement of $18.7 million. In the Company's next general rate case, the Department will investigate the cost to serve the streetlighting rate classes, including the

elimination of the class subsidies, within the Department's rate continuity constraints.[(5)]

C. Equipment for Sale

1. Introduction

The Act provides that a municipality may acquire all or any part of the streetlighting equipment of the electric company in the municipality. G.L. c. 164, § 34A(b). The Company's current streetlighting rates provide two services, lamp service and distribution service. These services are currently bundled under one charge. However, when a municipality chooses to purchase streetlighting equipment pursuant to G.L. c. 164, § 34A, it is necessary for an electric company to unbundle the current streetlighting rates by separating the costs for distribution service from the costs for lamp service and to develop an alternative streetlighting rate.

The Department requires that electric companies adhere to the Federal Energy Regulatory Commission ("FERC") System of Accounts. The costs for streetlighting service are collected in Account 373. The FERC system of accounts defines Account 373, Streetlighting and Signal Systems, as including "the cost installed of equipment used wholly for public street and highway lighting or traffic, fire alarm, police, and other signal systems." The Company proposes to design the new Rate S-5 by determining the streetlighting equipment in Account 373 that should be subject to sale, and the equipment that should not be sold to cities and towns (Exh. MECo-1, at 9). The Department must determine what portion of streetlighting equipment included in Account 373 should be subject to sale and, therefore, removed from the cost of distribution service.

2. Positions of the Parties

a. MMA

MMA states that G.L. c.164, §34A requires MECo to offer for sale its streetlighting equipment to interested municipalities (MMA Brief at 4). MMA states that the design of MECo's proposed Rate S-5 is not consistent with the requirement that all streetlighting equipment would be offered for sale to municipalities (MMA Brief at 4). According to MMA, the Department stated that it would look to whether "the principal use of the equipment is to provide streetlighting," in which case "the equipment is subject to municipal purchase" (MMA Reply Brief at 7, citing D.T.E. 98-89, at 2-3). The Department further considers "individual streetlights to be an integral facility consisting of luminaires, lamps, ballasts, photocells, brackets, conductors from the luminaires to the distribution connection, and dedicated poles where applicable" (id. at 7).

MMA asserts that MECo proposes that only 73.5 percent of its streetlighting equipment included in Account 373, be offered for sale (MMA Brief at 4). According to MMA, MECo inappropriately decided which streetlighting equipment municipalities would "most likely desire to purchase" (id.).

Further, MMA asserts, MECo relied upon an inappropriate demarcation point of company and customer ownership and responsibility (id.). MMA asserts that MECo made the unilateral and totally subjective decision as to which streetlighting equipment

would be subject to sale to municipalities (id. at 5). MMA asserts that G.L. c.164, §34A, clearly states that the municipality has the right to purchase all or any part of such lighting equipment (id. at 6). MMA states that there is no need or legal basis for either the Department or the Company to engage in such arbitrary and subjective exercises (id.).

MMA urges the Department to adopt a comprehensive definition of streetlighting equipment, including foundations, conduits, and other underground equipment whose principal use is for streetlighting purposes (id. at 7). MMA asserts that if the streetlighting equipment included in Account 373 is so inextricably linked to MECo's distribution system that it is impractical to sell it, then that equipment should be removed from Account 373 and the cost of such equipment should be allocated to all of MECo's retail distribution customers (id.).

b. Haverhill

Haverhill asserts that G.L. c. 164, § 34A, authorizes the community to purchase all streetlighting equipment (Haverhill Brief at 9). Haverhill concurs with the argument advanced by MMA regarding the definition of the term streetlighting equipment (id.). Therefore, according to Haverhill, all of the equipment categorized by the utility as streetlighting equipment in its annual FERC regulatory filings should be included for purchase (id.).

c. MECo

MECo proposes to sell only a portion of the streetlighting equipment in Account 373 to communities wishing to purchase streetlights. Specifically, MECo is proposing to sell the luminaires, brackets, and dedicated streetlight poles, but it has proposed to retain ownership of underground equipment, foundations, and any other facilities that are intermingled with distribution operations (Company Brief at 5). For example, a single conduit in a duct bank may be used for streetlighting, but the other conduits are used for distribution operations (id.).

The Company states that the sale of the single conduit, and access for maintenance would be disruptive to distribution operations and could create significant safety and other issues for workers in the resultant common space (id. at 6). To simplify these work rules, provide a clear delineation of ownership, and maintain consistent treatment in the bundled and unbundled tariffs, the Company conducted a separation study to determine the streetlighting equipment in Account 373 that should be subject to sale, and the equipment that should not be sold to cities and towns (id.).

According to MECo, its division of streetlighting equipment subject to sale provides the towns with the ability to own and maintain streetlighting facilities as required by the statute, but defines a clear demarcation between town ownership and MECo's facilities (id.). According to MECo, the approach will simplify work rules and administration for separate ownership, limit disputes about maintenance responsibilities, and reduce safety

concerns (id.). For these reasons, MECo asserts that the division of ownership it proposes is reasonable and appropriate (id.). Accordingly, the Department should approve its proposal and allow the cost of equipment not subject to sale to be included in the alternative tariff (id.).

MECo asserts that MMA's position is based on a misconstruction of the G.L. c. 164, § 34A(a) provision regarding "all or any such lighting equipment" (Company Reply Brief at 7). The Company contends that the first sentence of the section defines what lighting equipment is covered by the Act, including "lighting equipment owned by the electric company, such as lighting ballasts, fixtures, and other equipment necessary for the conversion of electric energy into streetlighting service. . . ." (id.). The Company states that the language is ambiguous and that because foundations and underground conduit are not expressly included in the statutory definition, the definition does not incorporate all of the categories of equipment in Account 373 (id.). The Company states that the Department has the discretion to consider the practical and operational consequences of a sale when determining the limits of the statutory definition (id. at 7-8). The Company contends that the Department should exercise discretion in defining streetlighting equipment subject to sale as it has in D.T.E. 98-89. An appropriate exercise of discretion would allow utilities to retain ownership of underground facilities and to include the cost of these facilities in the alternative tariff (id. at 7).

3. Analysis and Findings

The Act provides that a municipality may acquire all or any part of the streetlighting equipment of the electric company in the municipality. G.L. c.164, §34A(b). In D.T.E. 98-89, the Department addressed the issue of streetlighting equipment subject to municipal purchase:

[i]n determining the equipment subject to municipal purchase, the Department will consider the purpose of the equipment. In making this determination, the Department will consider whether the purpose of the equipment is to provide distribution service. This determination of streetlighting equipment subject to municipal purchase would also be consistent with the Department's classification of streetlighting equipment in Account 373 of the Federal Energy Regulatory Commission's System of Accounts. If the Account 373 equipment serves no purpose in the distribution system, it should be considered streetlighting equipment. The Department will also consider the principal use of the equipment. If the principal use of the equipment is to provide streetlighting, the equipment is subject to municipal purchase.

D.T.E. 98-89, at 2-3.

The foundations, conduits, and other underground equipment that do not support utility service are not part of the distribution system. Conversely, those that do, are.

Therefore, consistent with D.T.E. 98-89, the Department finds that the foundations, conduits, and other underground equipment that are not part of the distribution system are part of streetlighting equipment. The record in this proceeding supports a finding that all equipment in Account 373 serves no purpose in the distribution system. Accordingly, all equipment included in Account 373 shall be subject to sale and shall be removed from the rate base allocated to Rate S-5.

MECo also raised a concern regarding safety issues associated with municipalities performing maintenance on streetlighting equipment in close proximity to distribution facilities. The Department also addressed this issue in D.T.E. 98-89:

BECo's safety concerns associated with the Towns purchasing equipment located within the power space on the Company's utility poles would be most effectively addressed through the implementation of safe work practices by the municipality and reasonable maintenance work make-ready preparations by the electric company. In addition, it would also be reasonable for an electric company to require indemnification of the electric company by the municipality for any maintenance performed on the streetlighting equipment.

D.T.E. 98-89, at 3.

Therefore, consistent with our decision in D.T.E. 98-89, the Department reaffirms that when municipalities purchase streetlighting equipment such as foundations, conduits, and other underground equipment located in proximity to distribution facilities, safety concerns are best addressed through the implementation of safe work practices by the municipality and reasonable maintenance work make-ready preparations by the electric company.

D. Other Tariff Issues

1. Pole Charges and Pole Attachment Fees

The Department has found that dedicated poles are to be included with the streelighting equipment subject to municipal purchase. D.T.E. 98-89, at 3. The Company's proposal to eliminate dedicated pole charges from its Rate S-5 tariff is consistent with the Department's findings in D.T.E. 98-89. Therefore, the Company's proposal is accepted. With respect to the Company's proposal to notify customers of the intent to include pole attachment charges in the Rate S-5 tariff at the time of its next general rate filing, in D.T.E. 98-89, at 6, the Department noted that it would be appropriate to establish a fully-allocated, cost-based charge for municipal streetlighting attachments during such a proceeding.[(6)] While the Company may propose such a charge, it would not be appropriate to include such a notice in the tariff.

2. Changes to the Other Streetlighting Tariffs

MECo proposes to modify its existing streetlighting tariffs to expand the current liability and indemnification provisions, expand the availability clause for private streetlighting service, and permit existing S-2 and S-3 customers who had not yet completed their conversions under these now-closed tariffs to complete their conversions. The Company states that its proposed changes to the other streetlighting tariffs are not necessary for the Department's action on Rate S-5; however, the proposed changes are reasonable and the modifications should be approved in this proceeding (Company Brief at 6-7). No other party commented on this issue.

These changes are not at issue in the alternative tariff. They are therefore, outside the scope of this proceeding. The proposed changes would be better addressed as part of the Company's next general rate case. Accordingly, the proposed changes to the other streetlighting tariffs are not approved in this proceeding.

III. ORDER

Accordingly, after due notice, investigation and consideration, it is

ORDERED: That the proposed tariffs of Massachusetts Electric Company, M.D.T.E. Nos. 990 through 994, submitted on July 7, 1998 be and hereby are DISALLOWED; and it is

FURTHER ORDERED: That Massachusetts Electric Company shall file rates and charges in compliance with the requirements of this Order; and it is

FURTHER ORDERED: That Massachusetts Electric Company shall comply with all orders and directives contained herein; and it is

FURTHER ORDERED: That the new rates filed by Massachusetts Electric Company shall apply to electric service consumed on or after February 1, 1999, but unless otherwise ordered by the Department, shall not become effective until a filing that demonstrates that such rates comply with this Order has been approved by the Department.

By Order of the Department,

_____

Janet Gail Besser, Chair

_____

James Connelly, Commissioner

_____

W. Robert Keating, Commissioner

_____

Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

1. In addition, on August 13, 1998, the Department issued a Notice of Inquiry and Order Seeking Comments on generic issues related to the municipal purchase of electric company streetlighting equipment pursuant to the Act. D.T.E. 98-77. The Department received comments from the Office of the Attorney General, Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company, Eastern Edison Company, Massachusetts Electric Company, Western Massachusetts Electric Company, Brotherhood of Utility Workers, Cape Light Compact, the Towns, National Energy Choice (additional joint comments with the Massachusetts Municipal Association were filed on November 25, 1998), the Cities of Haverhill and Quincy, and the Towns of Chelmsford, Northborough and Stoneham.

2. The MMA has retained the services of National Energy Choice, LLC ("NEC") to implement its municipal energy program. Although the MMA submitted briefs jointly with NEC, NEC is not a party to this proceeding.

3. The Company classifies "lamp service" as streetlighting equipment subject to sale. "Lamp service" costs would be avoided by communities that purchase their streetlighting equipment and receive service under Rate S-5.

4. The alternative tariff would not be applicable to that portion of streetlighting equipment that municipalities do not purchase.

5. The Department notes that since all the streetlighting rates evidently are not collecting their cost of service based on the cost of service study filed in D.P.U./D.T.E. 96-25, these rate classes may incur increases in the Company's next general rate case if rates are set based on the cost of service. D.P.U./D.T.E. 96-25 was, of course, a settlement; and so the underlying allocation was not the result of fact finding by the Department in support of its final Order. But, even so, purchasers of streetlighting equipment should understand that future rates will increase as they move toward full recovery of cost of service.

6. We again draw prospective purchasers attention to the point made in note 5, above.